

THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	CAUSE NO. 3:93-CR-61(1)
	)	
HENRY BOOKER	)	

OPINION AND ORDER

On April 22, 2008, the court granted defendant Henry Booker's motion for a sentence reduction under 18 U.S.C. § 3582(c)(2), finding that the original term of imprisonment was based on a guideline sentencing range that was subsequently lowered and made retroactive by the Sentencing Commission pursuant to 28 U.S.C. § 994(u). [Doc. No.181]. The court found Mr. Booker's request for a reduction below the new guideline range inappropriate because his original below-range sentence resulted from the statutory maximum, rather than mitigating sentencing factors. Mr. Booker's motion for relief from that order was denied on September 23, 2008 [Doc. No. 183], and on October 6 he filed a notice of appeal challenging that order. His motion to proceed *in forma pauperis* on appeal is currently before the court.

Federal Rule of Appellate Procedure 24(a)(3) provides that a financially indigent person may be permitted to proceed on appeal *in forma pauperis* unless the court "certifies that the appeal is not taken in good faith." In other words, the court must determine "that a reasonable person could suppose that the appeal has some merit." Walker v. O'Brien, 216 F.3d 626, 632 (7th Cir. 2000). Because

no reasonable person could find that Mr. Booker's appeal has merit, the court concludes that the appeal is not taken in good faith and that Mr. Booker's request for pauper status must be denied.

Accordingly, the motion to proceed on appeal *in forma pauperis* [Doc. No. 187] is DENIED.

SO ORDERED.

Entered: November 3, 2008

/s/ Robert L. Miller, Jr.  
Chief Judge  
United States District Court

cc: H. Booker  
AUSA  
USPO